

CHAPTER 5:

PETITIONS AND PRELIMINARY HEARINGS

**Juvenile Probation Officer and Caseworker
Self-Instructional Manual**

JUVENILE PROBATION OFFICER AND CASEWORKER SELF-INSTRUCTIONAL MANUAL

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PETITIONS

Petitions to Commence Cases in the Family Division

A petition is “a complaint or other written accusation . . . that a juvenile has committed an offense.” MCR 3.903(A)(19).

Only the prosecuting attorney may file a petition requesting the court take jurisdiction of a juvenile for having committed a criminal offense. MCL 712A.11(2); MCR 3.914(B)(1). Any person may provide information to the court indicating that a juvenile has committed a status offense. MCL 712A.11(1).

Required Contents of Petitions

A petition must set forth the facts. MCL 712A.11(3). It must also include identifying information about the juvenile (name, address, and date of birth, if known), his/her parents, guardian legal custodian, the alleged offense, and the court action requested.

The petition has two principal functions:

1. to allow a court to determine if a statutory basis for jurisdiction exists, and
2. to provide the juvenile notice of the charges against him or her.



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Preliminary Hearings

“A preliminary hearing is the formal review of the petition when the judge or referee considers authorizing the petition and placing the case on the formal calendar.”

In re Hatcher, 443 Mich 426 (1993).

The court must hold a preliminary hearing if a juvenile is in custody or the petition requests detention. MCL 712A.14(2); MCR 3.932(A).

Authorizing a Petition be Filed

Before the court may acquire formal jurisdiction of a case, the court must authorize a petition to be filed. MCL 712A.11(1) - (2) A “petition authorized to be filed” refers to written permission by the court to file a petition containing allegations against the juvenile. MCR 3.903(A)(20). This is the point where the juvenile’s court record begins.



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A JUVENILE'S RIGHT TO COUNSEL

Constitutional and Statutory Rights to Counsel

In *In re Gault*, 387 US 1, 41 (1967), the United States Supreme Court established a juvenile's right to counsel in delinquency cases:

MCL 712A.17c(2)(a)-(e) state that the court must appoint an attorney for a juvenile if one or more of the following circumstances is present:

- “(a) The child's parent refuses or fails to appear and participate in the cases.
- “(b) The child's parent is the complainant or victim.
- “(c) The child and those responsible for his or her support are financially unable to employ an attorney and the child does not waive his or her right to an attorney.
- “(d) Those responsible for the child's support refuse or neglect to employ an attorney for the child and the child does not waive his or her right to an attorney.
- “(e) The court determines that the best interests of the child or the public require appointment.”



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Appointment of a Guardian Ad Litem (GAL)

In addition to appointment of an attorney, the court may appoint a guardian ad litem (a “trusted advisor” who does not need to be an attorney) to promote and protect the interests the youth.

Time Requirements for Preliminary Hearings

MCR 3.935(A)(1) states that a “preliminary hearing must commence no later than 24 hours after the juvenile has been taken into court custody, excluding Sundays and holidays, MCR 8.110(D)(2), or the juvenile must be released.



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RELEASING OR DETAINING A JUVENILE PENDING FURTHER ORDER, OR TRIAL

Determining Whether to Release or Detain

MCR 3.395(C)(1) lists the factors the court must consider when determining whether to release a juvenile with, or without, conditions:

- (i) the juvenile's family ties and relationships;
- (ii) the juvenile's prior delinquency record;
- (iii) the juvenile's record of appearance, or nonappearance, at court proceedings;
- (iv) the violent nature of the alleged offense;
- (v) the juvenile's prior history of committing acts that result in bodily injury to others;
- (vi) the juvenile's character and mental ability;
- (vii) the courts ability to supervise the juvenile if placed with a parent or relative; and
- (viii) any other factors indicating the juvenile's ties to the community, the risk of nonappearance, and the danger to the juvenile or the public if the juvenile is released.



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Criteria for Detention

MCR 3.935(D)(1) states, in part:

(1) A juvenile may be ordered detained, or continued in detention, if the court finds probable cause to believe the juvenile committed the offense, and one of more of the following exists:

- (a) the offense is so serious that release would endanger the public safety;
- (b) the juvenile charged with a [felony] offense will likely commit another offense pending trial; and
 - (i) another petition is pending,
 - (ii) the juvenile is on probation,
 - (iii) the juvenile was previously under the court's jurisdiction;
- (c) there is substantial likelihood, that if released, the juvenile will not appear at the next court proceeding;
- (d) the home conditions of the juvenile make detention necessary;
- (e) the juvenile has run away from home (there are certain limitations for status offenders);
- (f) the juvenile has failed to remain in placement, in violation of a court order; or
- (g) pretrial detention is specifically authorized by law.



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Conditions for Release

The court may release a juvenile to a parent with or without conditions. MCR 3.935(E)(1). The court may order any condition or conditions that it considers appropriate, including, but not limited to, the following:

- (a) not commit any offense while released;
- (b) not use alcohol, any controlled substance or tobacco product;
- (c) participate in a substance abuse assessment, testing, or treatment program;
- (d) participate in a treatment program for a physical or mental condition;
- (e) comply with restrictions on personal associations or place or residence;
- (f) comply with a specified curfew;
- (g) maintain appropriate behavior and attendance at an educational program; and
- (h) the driver's license or passport will be surrendered. MCR 3.935(E)(1)(a)-(h).

Violations of Conditions of Release

If a juvenile allegedly violates a condition of release, the court may order the juvenile to be apprehended and detained. MCR 3.935(E)(2) After providing the juvenile with an opportunity to be heard regarding the alleged violation, the court may modify the juvenile's conditions of release or revoke the juvenile's release.



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Bail

The court may require a parent, guardian, or legal custodian to post bail. A juvenile may not post their own bail.

Bonds

Bonds allow the release of the juvenile by means of having someone on his or her behalf deposit money with the court or agree to pay a certain amount (post security) to insure his or her appearance at later proceedings, or, if the court determines, allows the juvenile to be released on their own word.

Types of Bonds

- **Cash or Surety:** The court may require a parent, guardian, or legal custodian to post a surety bond or cash in the full amount of the bail.
- **Personal Recognizance:** An obligation entered into before the court containing an individual's promise to appear and answer to an alleged offense.
- **Ten Percent:** A procedure that allows persons to pay to the court ten percent (10%) of the bond otherwise required of them to obtain their release.

Forfeiture of Bond

If the conditions of bail are not met, the court may issue a writ of apprehension of the juvenile and order forfeiture of the bail money. MCR 3.935 (F).

